
STATUTORY RULES OF NORTHERN IRELAND

2008 No. 167

**The Plastic Materials and Articles in Contact
with Food Regulations (Northern Ireland) 2008**

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the Plastic Materials and Articles in Contact with Food Regulations (Northern Ireland) 2008 and come into operation —

- (a) for the purposes of regulation 27(c) on 1st July 2008;
- (b) for all other purposes on 5th May 2008.

Interpretation

2.—(1) In these Regulations —

“authorised officer” means any person who is authorised in writing by a district council (whether or not that person is an officer of that district council) to act in matters arising under these Regulations;

“BADGE” has the meaning given in Article 1(1)(a) of Regulation 1895/2005;

“BFDGE” has the meaning given in Article 1(1)(b) of Regulation 1895/2005;

“business” is to be construed in accordance with Article 2(2) of the Order;

“capable” means capable as established under regulation 13;

“Directive 82/711” means Council Directive [82/711/EEC](#) laying down the basic rules necessary for testing migration of the constituents of plastic materials and articles intended to come into contact with foodstuffs(1) as amended;

“Directive 85/572” means Council Directive [85/572/EEC](#) laying down the list of simulants to be used for testing migration of constituents of plastic materials and articles intended to come into contact with foodstuffs(2) as amended;

“Directive 88/388” means Council Directive [88/388/EEC](#) on the approximation of the laws of the Member States relating to flavourings for use in foodstuffs and to source materials for their production(3) as corrected by corrigendum dated 14th December 1988(4);

(1) OJ No.L297, 23.10.1982, p.26; as amended by Commission Directive [93/8/EEC](#) (OJ No. L90, 14.4.1993, p.22) and Commission Directive [97/48/EC](#) (OJ No. L222, 12.8.1997, P.10)

(2) OJ No. L372, 31.12.1985, p.14, as amended by Commission Directive [2007/19/EC](#) which was published in revised and corrected form in OJ No. L97, 12.4.2007, P.50

(3) OJ No. L184, 15.7.1988, p.61

(4) OJ No. L345, 14.12.1988, p.29

“Directive 89/107” means Council Directive [89/107/EEC](#) on the approximation of the laws of the Member States concerning food additives authorised in foodstuffs intended for human consumption⁽⁵⁾ as amended;

“the Directive” means Commission Directive [2002/72/EC](#)⁽⁶⁾ relating to plastic materials and articles intended to come into contact with foodstuffs, as amended;

“the Purity Directives” means Commission Directive [95/31/EC](#) laying down specific criteria of purity concerning sweeteners for use in foodstuffs⁽⁷⁾ as amended, Commission Directive [95/45/EC](#) laying down purity criteria concerning colours for use in foodstuffs⁽⁸⁾ as amended and Commission Directive [96/77/EC](#) laying down specific purity criteria for food additives other than colours or sweeteners⁽⁹⁾ as amended;

“EEA State” means a State which is a Contracting Party to the agreement on the European Economic Area⁽¹⁰⁾ signed at Oporto on 2nd May 1992, as adjusted by the Protocol⁽¹¹⁾ signed at Brussels on 17th March 1993;

“EFSA” means the European Food Safety Authority;

“fatty foods” means foods for which, in migration testing, simulant D is specified in Directive [85/572/EEC](#);

“food” is to be construed in accordance with Article 15(5) of the Order;

“good technical quality” means good technical quality as regards the purity criteria;

“handling of food” means use in connection with the storage, preparation, packaging, sale or serving of food;

“import” means import in the course of a business;

“infants” means children under the age of twelve months;

“material or article” means a material or article falling within the definition of materials and articles in Article 1(2) of Regulation 1895/2005;

“monomer” means any substance that is included for the purposes of the Directive among monomers and other starting substances;

“NOGE” has the meaning given in Article 1(1)(c) of Regulation 1895/2005;

“the Order” means the Food Safety (Northern Ireland) Order 1991;

“plastic functional barrier” means a barrier consisting of one or more layers of plastics which ensures that the finished material or article complies with Article 3 of Regulation 1935/2004 and with the Directive;

“plastic material or article” means anything which for the purposes of the Directive is included among those plastic materials and articles and parts thereof to which the Directive applies;

(5) OJ No. L40, 11.2.1989, p. 27, as amended by European Parliament and Council Directive [94/34](#) (OJ No. L237, 10.9.1994, p.1)

(6) OJ No. L220, 15.8.2002, p.18, as amended by Commission Directive [2004/1/EC](#) (OJ No. L7, 13.1.2004, p.45), Commission Directive [2004/19/EC](#) (OJ No. L71, 10.3.2004, p.8), Commission Directive [2005/79/EC](#) (OJ No. L302, 19.11.2005, p.35) and Commission Directive [2007/19/EC](#) (which was published in revised and corrected form in OJ No. L97, 12.4.2007, p.50)

(7) OJ No. L178, 28.7.95, p.1, as amended by Commission Directive [98/66/EC](#) (OJ No. L257, 19.9.1998, p.35), Commission Directive [2000/51/EC](#) (OJ No. L198, 4.8.2000, p.41), Commission Directive [2001/52/EC](#) (OJ No. L190, 12.7.2001, p.18) and Commission Directive [2004/46/EC](#) (OJ No. L114, 21.4.2004, p.15)

(8) OJ No. L226, 22.9.95, p.1, as amended by Commission Directive [1999/75/EC](#) (OJ No. L206, 5.8.1999, p.19), Commission Directive [2001/50/EC](#) (OJ No. L190, 12.7.2001, p.14) and Commission Directive [2004/47/EC](#) (OJ No. L113, 20.4.2004, p.24)

(9) OJ No. L339, 30.12.96, p.1, as amended by Commission Directive [2001/30/EC](#) (OJ No. L146, 31.5.2001, p.1), Commission Directive [2002/82/EC](#) (OJ No. L292, 28.10.2002, p.1), Commission Directive [2003/95/EC](#) (OJ No. L283, 31.10.2003, p.71) and Commission Directive [2004/45/EC](#) (OJ No. L113, 20.4.2004, p.19)

(10) OJ No. L1, 3.1.1994, p.1

(11) OJ No. L1, 3.1.1994, p.571

“plastic multi-layer material or article” means a plastic material or article composed of two or more layers of materials each consisting exclusively of plastics, which are bound together by means of adhesives or other means;

“Regulation 1895/2005” means [Commission Regulation \(EC\) No 1895/2005](#) on the restriction of use of certain epoxy derivatives in materials and articles intended to come into contact with food⁽¹²⁾;

“Regulation 1935/2004” means [Regulation \(EC\) No 1935/2004](#) of the European Parliament and of the Council on materials and articles intended to come into contact with food and repealing Directives [80/590/EEC](#) and [89/109/EEC](#)⁽¹³⁾;

“sell” includes offer or expose for sale or have in possession for sale;

“the 1998 Regulations” means the Plastic Materials and Articles in Contact with Food Regulations (Northern Ireland) 1998⁽¹⁴⁾;

“the 2007 Regulations” means the Materials and Articles in Contact with Food Regulations (Northern Ireland) 2007⁽¹⁵⁾;

“young children” means children aged between one and three years.

(2) For the purposes of these Regulations the supply otherwise than on sale, in the course of a business, of any material or article is deemed to be a sale.

(3) Any other expression used in these Regulations and in the Directive, Directive 82/711, Directive 85/572 or Regulation 1895/2005 bears the same meaning in these Regulations as it bears in that Directive or Regulation.

(4) Except in regulation 11(3) and Part 5 of Schedule 3, any reference to a numbered Annex is a reference to that Annex to the Directive.

(5) Any reference to an Annex to the Directive is a reference to that Annex as amended from time to time.

(6) The Interpretation Act (Northern Ireland) 1954⁽¹⁶⁾ shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

PART 2

Requirements for Materials and Articles

Restriction on the use, sale or import of plastic materials and articles

3.—(1) A person shall not—

- (a) use for the handling of food in the course of a business;
- (b) sell for the purpose of handling of food; or
- (c) import from anywhere other than an EEA State for the purpose of handling of food,

a plastic material or article which fails to meet the required standard.

(2) For the purposes of this regulation a plastic material or article fails to meet the required standard if—

(12) OJ No. L302, 19.11.2005, p.28

(13) OJ No. L338, 13.11.2004, p.4

(14) S.R. 1998 No. 264, as amended by S.R. 2000 No. 402, S.R. 2002 No.316, S.R. 2003 No.2, S.R. 2004 No.493 and S.R. 2005 No.49. It was revoked by SR 2006 No.251

(15) S.R. 2007 No.434

(16) 1954 c.33 (NI)

- (a) it has been manufactured with a prohibited monomer as described in regulation 4(2) or a prohibited additive as described in regulation 5(2); or
- (b) it does not meet the required standards set out in regulation 6, 7, 8, 9, 10 or 11.

Restriction on the use of monomers in the manufacture of plastic materials and articles

4.—(1) Subject to paragraphs (3), (4) and (5), a person shall not use any prohibited monomer in the manufacture of any plastic material or article.

(2) A prohibited monomer is any monomer which is not —

- (a) of good technical quality;
- (b) identified by PM/REF No, CAS No (if any) and name in columns 1, 2 and 3 respectively of Sections A or B of Annex II; and
- (c) used in accordance with any restrictions and specifications for that monomer set out or referred to in column 4 of those Sections.

(3) Paragraph (1) does not apply to the use of a monomer in the manufacture of any —

- (a) surface coatings obtained from resinous or polymerised products in liquid, powder or dispersion form, including but not limited to varnishes, lacquers and paints;
- (b) epoxy resins;
- (c) adhesives and adhesion promoters; or
- (d) printing inks.

(4) Paragraph (1) shall not be taken to prohibit the manufacture of any plastic material or article with any substance if the substance in question is a mixture which falls within paragraph 3(c) (relating to mixtures of authorised substances) of Annex II and is of good technical quality.

(5) In any proceedings for an offence under these Regulations where it is alleged that a plastic material or article does not comply with paragraph (1) because it was manufactured with any monomer (whether or not of good technical quality) other than one mentioned in paragraph (2)(b) it shall be a defence for the person accused to prove that each such monomer —

- (a) is present in the finished plastic material as an impurity, a reaction intermediate or a decomposition product which falls within paragraph 3(a) of Annex II, or
- (b) is an oligomer or a natural or synthetic macromolecular substance or a mixture thereof which falls within paragraph 3(b) of that Annex,

and is of good technical quality.

(6) Schedule 1 has effect to supplement this regulation.

Restriction on the use of additives in the manufacture of plastic materials and articles

5.—(1) Subject to paragraph (3) a person shall not use in the manufacture of any plastic material or article any prohibited additive.

(2) A prohibited additive is —

- (a) any additive identified by PM/REF No, CAS No (if any) and name in columns 1, 2 and 3 respectively of Section A or B of Annex III which —
 - (i) is not of good technical quality, or
 - (ii) is not used in accordance with any restrictions and specifications for that additive set out in the corresponding entry in column 4 of Section A or B of that Annex; or
- (b) any food additive authorised by Directive 89/107 or any flavouring authorised by Directive 88/388 that migrates into food —

- (i) in a quantity that has a technological function in the final food product, or
- (ii) where the food is of a type for which the use of any such food additive or flavouring is so authorised, in quantities exceeding the limits provided for in Directive 89/107 or Directive 88/388 as appropriate, or in Annex III, whichever is the lower.

(3) In any proceedings for an offence under these Regulations where it is alleged that the commission of the offence is due to the manufacture of a plastic material or article with any additive identified in Section A or B of Annex III which is not of good technical quality, it shall be a defence for the person accused to prove that each such additive is present in the finished plastic material or article as an impurity, a reaction intermediate or a decomposition product.

(4) Schedule 1 has effect to supplement this regulation.

Required standard for non-migration of constituents of monomers

6.—(1) Subject to paragraphs (2) and (3), where a migration limit expressed in mg/kg is indicated in column 4 of the relevant section of Section A or B of Annex II in relation to any monomer, a plastic material or article manufactured from that monomer meets the required standard under this regulation if it is not capable of transferring constituents of that monomer to food with which the plastic material or article may come into contact in quantities exceeding the appropriate limit, and for the purposes of this paragraph the appropriate limit is —

- (a) the number of milligrams expressed in column 4 released per kilogram of food in the case of any plastic material or article other than one specified in sub-paragraph (b); and
- (b) one sixth of the number of milligrams expressed in column 4 per square decimetre of surface area of the plastic material or article if the plastic material or article comprises —
 - (i) an article which is a container or is comparable to a container or can be filled, having a capacity of less than 500 millilitres or more than 10 litres, or
 - (ii) sheet, film or other plastic material or article which cannot be filled or for which it is impracticable to estimate the relationship between the surface area of the material or article in question and the quantity of food in contact with that surface area.

(2) A plastic material or article manufactured from any monomer for which a migration limit in mg/kg is expressed in column 4 of Section A or B of Annex II is not deemed to be capable of transferring constituents of that monomer to food with which the plastic material or article may come into contact in quantities exceeding the appropriate limit in paragraph (1) if the only food with which that plastic material or article may come into contact is food to which regulation 9(5) applies.

(3) For plastic materials or articles brought or intended to be brought into contact with food for infants and young children the migration limits referred to in paragraph (1) shall always be applied in mg/kg.

Required standard for non-migration of constituents of additives

7.—(1) Subject to paragraphs (2) and (3), where a migration limit expressed in mg/kg is indicated in column 4 of Section A or B of Annex III in relation to any additive, a plastic material or article manufactured containing that additive meets the required standard under this regulation if it is not capable of transferring constituents of that additive to food with which the plastic material or article may come into contact in quantities exceeding the appropriate limit, and for the purposes of this paragraph the appropriate limit is —

- (a) the number of milligrams indicated in column 4 released per kilogram of food in the case of any plastic material or article other than one specified in sub-paragraph (b); and
- (b) one sixth of the number of milligrams expressed in column 4 per square decimetre of surface area of the plastic material or article if the plastic material or article comprises —

- (i) an article which is a container or is comparable to a container or can be filled, having a capacity of less than 500 millilitres or more than 10 litres, or
- (ii) sheet, film or other plastic material or article which cannot be filled or for which it is impracticable to estimate the relationship between the surface area of the material or article in question and the quantity of food in contact with that surface area.

(2) A plastic material or article manufactured containing an additive for which a migration limit in mg/kg is expressed in column 4 of Section A or B of Annex III is not deemed to be capable of transferring constituents of that additive to food with which the plastic material or article may come into contact in quantities exceeding the appropriate limit in paragraph (1) if the only food with which that plastic material or article may come into contact is food to which regulation 9(5) applies.

(3) For plastic materials or articles brought or intended to be brought into contact with food for infants and young children the migration limits referred to in paragraph (1) shall always be applied in mg/kg.

Required standard for products obtained by bacterial fermentation

8. A product obtained by bacterial fermentation meets the required standard under this regulation if it is —

- (a) of good technical quality;
- (b) identified by PM/REF No., CAS No. and name in columns 1, 2 and 3 respectively of Annex IV; and
- (c) in compliance with the restrictions and specifications set out in column 4 of that Annex.

Required standards relating to overall migration limits

9.—(1) Subject to paragraph (5), a plastic material or article meets the required standard under this regulation if it is not capable of transferring its constituents to food with which it may come into contact in quantities exceeding the appropriate limit specified in paragraphs (2) to (4).

(2) Subject to paragraph (4), in the case of any plastic material or article comprising —

- (a) an article which is a container or comparable to a container or can be filled, with a capacity of less than 500 millilitres or more than 10 litres; or
- (b) sheet, film or any other material or article which cannot be filled or for which it is impracticable to estimate the relationship between the surface area of such material or article and the quantity of food in contact with it,

the appropriate limit is an overall migration limit of 10 milligrams per square decimetre of the surface area of the plastic material or article.

(3) In the case of any other plastic material or article, the appropriate limit is an overall migration limit of 60 milligrams of the constituents released per kilogramme of food or food stimulant.

(4) For plastic materials or articles intended to be brought into contact or already in contact with food intended for infants and young children, the appropriate limit is always that specified in paragraph (3).

(5) For the purposes of this regulation a plastic material or article is not deemed to fail to meet the required standard under paragraph (1) if the only food with which that material or article may come into contact is food —

- (a) which is specified in the table to Part 4 of Schedule 3; and
- (b) where there is no “X” placed anywhere in the group of columns headed “Simulants to be used” opposite that food.

(6) In any proceedings for an offence under these Regulations where it is alleged that a plastic material or article does not comply with this regulation, the defence available in paragraph 10(2) of Schedule 2 is available as specified in that paragraph.

Required standard for non-migration of primary aromatic amines

10.—(1) Subject to paragraph (4), a plastic material or article manufactured using primary aromatic amines meets the required standard under this regulation if it is not capable of transferring such amines (expressed as aniline) in a detectable quantity to food with which that plastic material or article may come into contact.

(2) Part B of Annex V has effect for the purpose of prescribing, for certain items listed in Section A or B of Annex II, Section A or B of Annex III, or Annex IV, the specifications for those items that are referred to in column 4 of the Annex or Section of Annex concerned.

(3) For the purposes of paragraph (1) a detectable quantity means at least 0.01 milligrams per kilogram of food or food simulant.

(4) The requirement in paragraph (1) does not apply to primary aromatic amines listed in the Directive.

Required standard relating to plastic multi-layer materials and articles

11.—(1) Subject to paragraph (2), a plastic multi-layer material or article meets the required standard if each layer of which it is composed complies with these Regulations.

(2) A layer which is not in direct contact with food and is separated from such contact by a plastic functional barrier is not obliged to comply with the requirements of these Regulations provided that —

- (a) the finished material or article complies with the relevant specific and overall migration limits; and
- (b) if any substance used in the manufacture of the layer is not included in the Directive or in national lists referred to in that Directive, that substance meets the requirements of paragraphs (3) and (4).

(3) A substance mentioned in paragraph (2)(b) must not belong to the category of those classified —

- (a) as proved or suspect “carcinogenic”, “mutagenic” or “toxic to reproduction” substances in Annex I to Council Directive [67/548/EEC\(17\)](#) as amended, or
- (b) under the self-responsibility criteria as “carcinogenic”, “mutagenic” or “toxic to reproduction” substances according to the rules of Annex VI to that Directive.

(4) The migration of a substance mentioned in paragraph (2)(b) into a food or simulant must not exceed 0.01 mg/kg, measured and expressed in accordance with the requirements and specifications contained in Article 7a(3) of the Directive.

Provisions relating to the use of certain epoxy derivatives (BADGE, BDGE and NOGE)

12.—(1) In this regulation —

- (a) any reference to a numbered Article is a reference to that Article in Regulation 1895/2005;
- (b) paragraphs (2) to (5) are subject to Article 1(3) (exception relating to certain storage containers and pipelines); and

(17) OJ No. 196, 16.8.1967, p.1, to which there have been numerous amendments and as last amended by Directive [2006/121/EC](#) of the European Parliament and the Council (OJ No. L396, 30.12.2006, p.850)

(c) for the purpose of Article 6(4) (requirement to disclose date of filling) the competent authority is the authority identified in regulation 15.

(2) Subject to Article 6(1), (2) (transitional provisions) and (4) (labelling requirements), a person shall not—

- (a) manufacture,
- (b) use for the handling of food in the course of a business,
- (c) sell for the purpose of the handling of food, or
- (d) import for the purpose of the handling of food

any material or article in contravention of Article 3 or Article 4 (prohibitions relating to BFDGE and NOGE respectively).

(3) A person shall not manufacture any material or article in such a way as to contravene the requirements of Article 2 (controls on the migration of BADGE from materials and articles).

(4) Subject to Article 6(1), a person shall not —

- (a) use for the handling of food in the course of a business,
- (b) sell for the purpose of the handling of food, or
- (c) import for the purpose of the handling of food

any material or article that has been manufactured in such a way as to contravene the requirements of Article 2.

(5) Subject to Article 6(3) (transitional provisions relating to materials and articles brought into contact with food before 1st January 2007), a person shall not contravene or fail to comply with the requirements of Article 5 (obligations regarding the provision of a written statement when marketing materials or articles containing BADGE or its derivatives).

(6) A person shall not without reasonable excuse fail to comply with a request made under Article 6(4).

Method of testing the capability of plastic materials or articles to transfer constituents, and methods of analysis

13.—(1) A plastic material or article shall be treated as capable of transferring constituents to food with which it may come into contact to the extent that such capability is established —

- (a) in any case other than one to which sub-paragraph (b) or (c) applies, and subject to Article 8(4) of the Directive (which may be applied on compliance with the conditions stated therein), by the verification methods specified in Schedule 2 (including the analytical tolerances referred to in paragraph 12 of that Schedule) and Schedule 3;
- (b) in any case where the extent to which vinyl chloride, as identified in Section A of Annex II, is capable of such transfer falls to be established, by the method referred to in regulation 9(2) of the 2007 Regulations; or
- (c) in any case where the extent to which a phthalate listed in Section B of Annex III with PM/Reference number 74640, 74880, 74560, 75100 or 75105 is capable of such transfer falls to be established, by the method referred to in Article 8(5) of the Directive.

(2) In Schedules 2 and 3, references to migration or release of a substance are to be construed as references to the transfer of constituents to the food or simulant representing the food with which the substance may come into contact.

(3) The specific migration of a constituent from a plastic material or article shall where applicable be determined in the manner specified in the relevant sub-paragraph of paragraph 8 of Annex II.

(4) The quantity of a constituent in a plastic material or article shall where applicable be determined in the manner specified in the sub-paragraph of paragraph 8 of Annex II relating to the term “QM(T)”, “QMA(T)” or, as the case may be, “QMA”.

Labelling and documentation

14.—(1) At marketing stages other than the retail stage a person who places on the market any plastic material or article or any substance intended for the manufacture of a plastic material or article must ensure that the plastic material or article or substance is accompanied by a written declaration which —

- (a) accords with Article 16(1) of Regulation (EC) No. 1935/2004;
- (b) contains the information specified in Schedule 4; and
- (c) complies with paragraph (2).

(2) A written declaration made under paragraph (1) must be revised when substantial changes in the production of a plastic material or article for which the declaration is issued bring about changes in the migration or when new scientific information is available.

(3) A person mentioned in paragraph (1) shall make available to a district council on request appropriate documentation to demonstrate that the plastic material or article or substance intended for its manufacture complies with the requirements of these Regulations.

(4) The documentation referred to in paragraph (3) shall contain the conditions and results of testing, calculations, other analysis, and evidence on the safety or reasoning demonstrating compliance.

PART 3

Execution and Enforcement

Enforcement

15. Each district council in its district shall execute and enforce —

- (a) the provisions of Regulation 1895/2005 mentioned in regulation 12, and
- (b) these Regulations.

Offences and Penalties

16.—(1) Any person who —

- (a) contravenes regulation 3(1), 4(1), 5(1), 12(2) to (5) or 14(1);
- (b) intentionally obstructs any person acting in the execution of Regulation 1895/2005 or these Regulations;
- (c) contravenes regulation 12(6), 14(3) or 20(3) or, without reasonable excuse, otherwise fails to give to any person acting in the execution of Regulation 1895/2005 or these Regulations any assistance or information which that person may reasonably require; or
- (d) in purported compliance with any requirement mentioned in sub-paragraph (c), knowingly or recklessly supplies information that is false or misleading in any material particular,

is guilty of an offence.

(2) Anyone guilty of an offence under these Regulations is liable —

- (a) in the case of an offence under paragraph (1)(a) or (d) —

- (i) on conviction on indictment to a term of imprisonment not exceeding two years or to a fine or both;
- (ii) on summary conviction to a term of imprisonment not exceeding six months or to a fine not exceeding the statutory maximum or both;
- (b) in the case of any other offence under these Regulations to a term of imprisonment not exceeding three months or to a fine not exceeding level five on the standard scale or both.
- (3) Nothing in paragraph (1)(c) is to be construed as requiring any person to answer any question or give any information if to do so might incriminate him.

Time limit for prosecutions

17. A prosecution for an offence under these Regulations shall not be begun after the expiry of three years from the commission of the offence or one year from its discovery by the prosecution, whichever is the earlier.

Offences due to the act or default of a third party

18. Where the commission by a person (A) of an offence under these Regulations is due to the act or default of some other person (B), person B shall be guilty of the offence and may be charged with and convicted of the offence whether or not proceedings are taken against person A.

Defence of exercising due diligence etc

19.—(1) In any proceedings for an offence under these Regulations it shall, subject to paragraph (5), be a defence for the person accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(2) Without prejudice to the generality of paragraph (1), a person accused of an offence under these Regulations who did not —

- (a) prepare the plastic material or article or, as the case may be, the material or article in respect of which the offence is alleged to have been committed; nor
- (b) import it into the United Kingdom,

shall be taken to have established the defence provided by paragraph (1) if the requirements of paragraphs (3) and (4) are satisfied.

(3) The requirements of this paragraph are satisfied if it is proved that —

- (a) the commission of the offence was due to the act or default of some other person who was not under the control of the accused, or to reliance on information supplied by such a person;
- (b) either —
 - (i) the accused carried out all such checks of the plastic material or article or material or article in question as were reasonable in all the circumstances, or
 - (ii) it was reasonable in all the circumstances for the accused to rely on checks carried out by the person who supplied the plastic material or article or the material or article in question; and
- (c) the accused did not know and had no reason to suspect at the time the offence was committed that the act or omission would amount to an offence under these Regulations.

(4) The requirements of this paragraph are satisfied if the offence is one of sale and it is proved that —

- (a) the commission of the offence was due to the act or default of some other person who was not under the control of the accused, or to reasonable reliance on information supplied by such a person;
- (b) the sale of which the alleged offence consisted was not a sale under the name or mark of the accused; and
- (c) the accused did not know and could not reasonably have been expected to know at the time the offence was committed that the act or omission would amount to an offence under these Regulations.

(5) If in any case the defence provided by this regulation involves the allegation that the commission of the offence was due to the act or default of another person, or to reliance on information supplied by another person, the accused shall not, without leave of the court, be entitled to rely on that defence unless —

- (a) at least seven clear days before the hearing; and
- (b) where the accused has previously appeared before a court in connection with the alleged offence, before the expiration of one month from his first such appearance,

he has served on the prosecution a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

(6) For the purposes of paragraph (2), “prepare” includes manufacture or subject to any form of treatment or process.

Transitional defence relating to PVC gaskets containing epoxidised soybean oil

20.—(1) In any proceedings for an offence under regulation 3 concerning the sale of a glass jar —

- (a) which contains
 - (i) infant formulae or follow-on formulae as defined by Commission Directive [2006/141/EC](#)(**18**), or
 - (ii) processed cereal-based foods or baby foods for infants and young children as defined by Commission Directive [2006/125/EC](#)(**19**), and
- (b) the lid of which is sealed by means of a PVC gasket containing epoxidised soybean oil having PM/Ref No. 88640 in Section A of Annex III,

it shall be a defence to prove the matters set out in paragraph (2).

(2) The matters to be proved are that —

- (a) the PVC gasket mentioned in paragraph (1)(b) was compliant with the relevant restrictions and specifications in column 4 at Item 259A of Part 1 of Schedule 2 to the Plastic Materials and Articles in Contact with Food Regulations (Northern Ireland) 2006(**20**);
- (b) the glass jar was filled and sealed before 19th November 2006;
- (c) the date of filling or a coded indication of that date was present on the jar or its lid at the time of sale; and
- (d) the labelling or marking with the particulars mentioned in sub-paragraph (c) at the time of sale complied with the requirements relating to durability in Article 2(1)(a) of Directive [2000/13/EC](#) of the European Parliament and of the Council(**21**) as amended.

(18) OJ No. L401, 30.12.2006, p.1

(19) OJ No. L339, 6.12.2006, p.16

(20) [S.R. 2006 No.251](#)

(21) OJ No. L109, 6.5.2000, p.29, as corrected by a corrigendum published on 25th May 2000 (OJ No. L124, 25.5.2000, p.66), and as amended by Commission Directive [2001/101/EC](#) (OJ No. L310, 28.11.2001, p.19, which was itself amended by Commission Directive [2002/86/EC](#), OJ No. L305, 7.11.2002, p.19), the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Hungary, the

(3) A person shall not without reasonable excuse fail to comply with a request to disclose the date signified by the coded indication mentioned in paragraph (2)(c) where that request is made by the district council having responsibility under regulation 15 for executing and enforcing these Regulations.

Other transitional defences and savings

21.—(1) Notwithstanding the revocation of the 1998 Regulations made by regulation 24 of the Plastic Materials and Articles in Contact with Food Regulations (Northern Ireland) 2006, in relation to any plastic material or article —

- (a) manufactured before the 14th September 1998, the defence in regulation 3(3) of the 1998 Regulations;
- (b) manufactured or imported into the European Community before 1st January 2003, the defence in regulation 10(13) of the 1998 Regulations;
- (c) put into free circulation in the European Community before 30th November 2002, the defence in regulation 10(14) of the 1998 Regulations;
- (d) manufactured or imported into the European Community before 1st March 2004, the defence in regulation 10(19)(a) of the 1998 Regulations;
- (e) manufactured or imported into the European Community before 1st March 2003, the defence in regulation 10(19)(b) of the 1998 Regulations;
- (f) containing azodicarbonamide and brought into contact with food before 2nd August 2005, the defence in regulation 10(23) of the 1998 Regulations; or
- (g) manufactured or imported into the European Community before 1st March 2006, the defence in regulation 10(25) of the 1998 Regulations,

shall apply in relation to offences under these Regulations in like manner as it applied to offences under the equivalent provisions in those Regulations.

(2) In any proceedings for an offence under these Regulations other than an offence referred to in regulation 20(1), it shall be a defence to prove —

- (a) that the act constituting the alleged offence was committed in relation to a plastic material or article which was manufactured or imported into the European Community before 19th November 2007; and
- (b) that the matter constituting the alleged offence would not otherwise have constituted an offence under these Regulations if the amendments to the Directive made by Commission Directive [2005/79/EC](#)(**22**) had not been implemented in Northern Ireland at the time the matter occurred.

(3) In any proceedings for an offence under these Regulations other than an offence referred to in regulation 20(1), it shall be a defence to prove —

- (a) (i) in the case of lids containing a gasket that do not comply with the restrictions and specifications for Ref. Nos. 30340, 30401, 36640, 56800, 76815, 76866, 88640 and 93760 contained in the Annex to [Commission Regulation \(EC\) No. 372/2007](#) laying down transitional migration limits for plasticisers in gaskets in lids intended to come into contact with foods(**23**), or

Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ No. L236, 23.9.2003, p.33) and Directive [2003/89/EC](#) (OJ No. L308, 25.11.2003, p.15)

(22) OJ No. L303, 19.11.2005, p35

(23) OJ No. L92, 3.4.2007, p.9, as corrected by corrigendum (OJ No. L97, 12.4.2007, p.70)

(ii) in the case of plastic materials and articles which do not comply with the restrictions and specifications for phthalates under Ref. Nos. 74560, 74640, 74880, 75100 and 75105 contained in Annex III,

that the act constituting the alleged offence was committed in relation to a plastic material or article which was manufactured or imported into the European Community before 1st July 2008; or

- (b) in any case other than those mentioned in sub-paragraph (a), that the act constituting the alleged offence was committed in relation to a plastic material or article which was manufactured or imported into the European Community before 1st May 2009; and
- (c) that the matter constituting the alleged offence would not otherwise have constituted an offence under these Regulations if the amendments to the Directive made by Commission Directive [2007/19/EC\(24\)](#) (as corrected by Corrigendum published on 12th April 2007) had not been implemented in Northern Ireland at the time the matter occurred.

Procedure where a sample is to be analysed

22.—(1) An authorised officer who has procured a sample under Article 29 of the Order and who considers it should be analysed shall divide the sample into three parts.

(2) If the sample consists of sealed containers and opening them would, in the opinion of the authorised officer, impede a proper analysis, the authorised officer shall divide the sample into parts by putting the containers into three lots, and each lot shall be treated as being a part.

(3) The authorised officer shall —

- (a) if necessary place each part in a suitable container and seal it;
- (b) mark each part or container;
- (c) as soon as reasonably practicable, give one part to the owner and notify the owner in writing that the sample will be analysed;
- (d) submit one part for analysis in accordance with Article 30 of the Order; and
- (e) retain one part for future submission under regulation 23.

Secondary analysis by the Government Chemist

23.—(1) Where a sample has been retained under regulation 22 and —

- (a) proceedings are intended to be or have been commenced against a person for an offence under these Regulations; and
- (b) the prosecution intends to adduce as evidence the result of the analysis mentioned in regulation 22,

paragraphs (2) to (7) apply.

(2) The authorised officer —

- (a) may of the officer's volition; or
- (b) shall —
- (i) if requested by the prosecutor (if a person other than the authorised officer);
- (ii) if the court so orders; or
- (iii) (subject to paragraph (6)) if requested by the defendant,

send the retained part of the sample to the Government Chemist for analysis.

(24) Published in revised and corrected form in OJ No. L97, 12.4.2007, p.50)

(3) The Government Chemist shall analyse the part sent to him under paragraph (2) and send to the authorised officer a certificate specifying the results of the analysis.

(4) Any certificate of the results of analysis sent by the Government Chemist shall be signed by or on behalf of the Government Chemist, but the analysis may be carried out by any person under the direction of the person who signs the certificate.

(5) The authorised officer shall immediately on receipt supply the prosecutor (if a person other than the authorised officer) and the defendant with a copy of the Government Chemist's certificate of analysis.

(6) Where a request is made under paragraph (2)(b)(iii) the authorised officer may give notice in writing to the defendant requesting payment of a fee specified in the notice to defray some or all of the Government Chemist's charges for performing the functions under paragraph (3), and in the absence of agreement by the defendant to pay the fee specified in the notice the authorised officer may refuse to comply with the request.

(7) In this regulation "defendant" includes a prospective defendant.

PART 4

Application for Authorisation

Applications for inclusion of an additive in the Community list of authorised additives

24.—(1) This regulation applies where a person has made an application for the inclusion of an eligible additive in the Community list referred to in Article 4 of the Directive.

(2) The application mentioned in paragraph (1), including supporting data, must have been made to EFSA before 1st January 2007.

(3) If during examination of the data referred to in paragraph (2), EFSA calls for supplementary information, the eligible additive may, if otherwise permitted to be used under the law of Northern Ireland, continue to be so used until EFSA has issued an opinion, provided the supplementary information is submitted within the time limits specified by EFSA.

(4) For the purposes of this regulation, an eligible additive is one whose use is permitted in one or more Member States before 1st January 2007.

PART 5

General and Supplementary

Application of provisions of the Order

25. The following provisions of the Order shall apply for the purposes of these Regulations as they apply for the purposes of the Order—

- (a) Article 4 (presumption that food is intended for human consumption);
- (b) Article 30(8) (relating to documentary evidence).

Amendments to the Materials and Articles in Contact with Food Regulations (Northern Ireland) 2007

26.—(1) The 2007 Regulations are amended in accordance with paragraphs (2) to (4).

(2) In regulation 2(1) —

- (a) omit the definition of “the 2006 Regulations”; and
- (b) after the definition of “sell” insert the following definition —
 - “the 2008 Regulations” means the Plastic Materials and Articles in Contact with Food Regulations (Northern Ireland) 2008”.
- (3) In regulation 10, in paragraph (4) for “2006” substitute “2008”.
- (4) In regulation 11 in paragraph (5) —
 - (a) for “2006” substitute “2008”; and
 - (b) for “11” substitute “13”.

Revocations

27. The following are revoked —
- (a) The Plastic Materials and Articles in Contact with Food (No.2) Regulations (Northern Ireland) 2006(**25**);
 - (b) Regulation 22 of the 2007 Regulations; and
 - (c) The Plastic Materials and Articles in Contact with Food (Lid Gaskets) Regulations (Northern Ireland) 2007(**26**).

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 10th April 2008.



Don Hill
A senior officer of the Department of Health,
Social Services and Public Safety